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Paper No. 11

In re Application of :
Martin Essing : DECISION ON PETITION
Application No. 09/843,348 :
Filed: April 26, 2001 :
Attorney Docket No. 5029=39RCE :

This is a decision on the petition filed on January 13, 2003 by which petitioner requests withdrawal of the holding that this application stands abandoned for failure to file a reply to the Office letter dated January 31, 2002. No fee is required for the petition.

The petition is granted.

Petitioner alleges that the application is not in fact abandoned because a timely reply to the Office letter in question, a final rejection, was filed. In support of this allegation petitioner has attached a copy of the reply which is a Request for Continued Examination (RCE) under 37 CFR 1.114. Petitioner has also included a copy of the filing receipt for the reply which shows that the RCE, together with authorization to charge the RCE, as well as a check for that fee, were in fact received in the Office on May 6, 2002. The RCE paper has a 37 CFR 1.8(a) certificate of mailing dated April 26, 2002 affixed thereto. As the certificate date is within the three month period for reply that was set in the final rejection, it is clear that the reply was timely filed pursuant to 37 CFR 1.8(b). In addition, Office financial records confirm receipt of the \$740.00 check for the RCE fee.

In view of the showing attached to the petition, it is clear that this application is not in fact abandoned. Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the examiner for action on the reply filed on the RCE filed on May 6, 2002, certificate of mailing date April 26, 2002.

PETITION GRANTED.

E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

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